IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/06/2004

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE N.KANNADASAN

Habeas Corpus Petition No.274 of 2004

Ganesan .. Petitioner

-Vs-

1. State of Tamilnadu
rep. by the Secretary
Prohibition and Excise Department
Fort St. George, Chennai-9.

2. The District Magistrate &
District Collector
Vellore District. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.P. Kumaresan

For Respondents : Mr. Abudukumar Rajaratnam
Additional Public Prosecutor

:O R D E R

(The order of the Court was made by
P.D.DINAKARAN, J.)
The petitioner, who has been captivated by the order of the second respondent dated 5.2.2004 branding him as bootlegger, under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982, has preferred this petition challenging the said order of detention.

2. According to the prosecution, on 9.1.2004, the detenu was found in possession of one mud pot containing 100 litres of boiled fermented wash, 4 mud pots each containing 100 litres of fermented wash, two black colour lorry tubes each containing 60 litres of arrack and one white colour plastic can containing 4 litres poisonous odour arrack. A case was registered against him in C rime No.17/2004 under Sections 4(1)(b), 4(1)(i)(aaa) read with 4(1-A)(ii)

of TNP Act and 328, IPC, on the file of Nemili Police Station. Considering the above case as ground case and taking note of eight adverse cases of akin nature, the order of detention was passed by the detaining authority.

3. The learned counsel for the petitioner contends that the bail application preferred by the petitioner was opposed on the ground that the petitioner was likely to be detained under Act 14 of 1982, terming him as a bootlegger, which reflects the predetermination of detaining the detenu and therefore, the order of detention is vitiated.

4. A Division Bench of this Court, in SETTU v. STATE OF TAMIL NADU REP. BY ITS SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, FORT ST.GEORGE, CHENNAI 600 009 & ANOTHER (HCP No.232 of 2003 DT.1 4.10.2003) held that the detaining authority was duty bound to dispel the doubt by holding that his decision to clamp detention order was made independently of any other

thing and only on the materials supplied to him, after the affidavit of the sponsoring authority was filed before him and in the absence of the same, the detention order is vitiated.

5. In view of the above, we are satisfied that the impugned order of detention is vitiated on the ground of predetermination. Therefore, this petition is liable to be allowed on this count. Accordingly, the writ petition is allowed. The detention order is quashed and the detenu is ordered to be released forthwith, unless he is required in any other case.

Index : Yes
Internet : Yes

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To

1. The Secretary to Government
Prohibition and Excise Department
Fort St. George, Chennai-9.

2. The District Magistrate &
The District Collector
Vellore District.

3. The Public Prosecutor
High Court, Madras.

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